

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

February 7, 2001

Dear Xxxxx:

This letter is in response to your letter dated October 27, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Please find attached a description of our company's service offerings. We would appreciate your opinion as to whether any of these services are taxable in Illinois. Please contact me should you have any questions concerning this matter.

Thank you for your attention to this matter.

Your attachment reads as follows:

How THE COMPANY works – A Sales tax perspective

THE COMPANY provides customers access to THE COMPANY's private network mainly so that these customers can send digital computer files to their clients. The process is similar to what NAME or a courier does with paper documents and computer diskettes. The difference is that THE COMPANY's network enables the digital files to be delivered electronically. THE COMPANY's customers are also able to store these files on THE COMPANY's system for future retrieval. In addition, THE COMPANY is also able to 'render' files. What this means is the customer will electronically send a digital file along with a set of computer commands to THE COMPANY. THE COMPANY will 'render' or process those commands on its computers and return the 'rendered' product back to the customer. The process is similar to batch processing on a mainframe computer. THE COMPANY does not take possession to the electronic file, nor does THE COMPANY manipulate or 'touch' anything within the customers' file in any of these service offerings.

THE COMPANY's service offerings can be obtained in one of two ways: 1) via a direct telephone line connection into THE COMPANY's private network; or 2) via the Internet.

THE COMPANY owns or leases all of the equipment used in providing these services. THE COMPANY pays the applicable sales tax on the purchase or lease of the equipment based on the location where the equipment is placed in service. THE

COMPANY retains ownership of the equipment used at the customer site. The equipment is not leased nor re-sold to the customer. THE COMPANY also pays for all of the telephone lines used in creating its private network. THE COMPANY pays the applicable telecommunications and sales taxes and fees charged for subscribing to these telephone lines. The costs of these lines are not separately passed on to the customer.

THE COMPANY currently has three main computer servers used in providing its services. One is located in STATE, one in STATE, and one in LOCATION. All three are connected to THE COMPANY's private network. Which server actually is used to provide the service varies by the location of the customer and how busy the servers are at the time the service is initiated by the customer. In addition, to insure THE COMPANY completes the service as fast as possible, THE COMPANY will replicate the service through a different server at the same time. Thus for one service activity, two servers will be involved in providing that service.

THE COMPANY charges the customer for use of THE COMPANY's private network system. For the sending of files, THE COMPANY charges the customer based on the size of the file. For the storage of files, THE COMPANY charges the customer based on the total size of the files stored on THE COMPANY's computers. For the rendering of files, THE COMPANY charges based on the amount of computer time needed to render the files.

THE COMPANY knows the location of all customers that have a direct telephone line connected to THE COMPANY's private network. For all our other customers, those who use the Internet to access THE COMPANY's private network, THE COMPANY may or may not know the location of that customer. If the customer pays by credit card, we do not need to know the customers' location.

THE COMPANY is not providing informational services because all the data that runs through THE COMPANY's system is the customer's own data. It is not manipulated or interpreted by THE COMPANY. THE COMPANY does use telecommunication services as a means of enabling delivery of digital files from THE COMPANY's customer to the customer's client or back to the customer for storage or rendering. However, THE COMPANY does not directly provide telecommunication services. THE COMPANY pays sales/telecommunications tax to all of its vendors used in creating THE COMPANY's private network (telecommunication lines and equipment).

Questions: Of the services listed above; delivery of digital files, the storage of digital files, and the rendering of computer commands, should THE COMPANY be collecting sales tax from its customer? Does it make a difference if the service is provided to a customer directly connected to THE COMPANY's private network, or a customer connected indirectly via the Internet?

If THE COMPANY is to collect sales tax from its customers, is THE COMPANY able to claim sale for resale on the equipment and phone lines used to provide these services?

We look forward to your response. Should you have any further questions, please contact me. Thank you for your time.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax. The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

It appears from the information in your letter that you are not transferring tangible personal property in providing the storage and rendering services service. If this were the case, sales tax would not be incurred.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed. Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Internet services, which include email, are not subject to tax because they constitute value-added services. Value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission are exempt (Section 2(c) of the Act). The services you describe appear to be the provision of transmission services. Charges such as these are subject to tax.

Gross charges does not include charges for the storage of data or information for subsequent retrieval or charges for the processing of data or information intended to change its form or content (Section 2(a)(3) of the Act). Charges for automated data storage, retrieval and processing services or for the use of computer time or other equipment are not included in gross charges. Automated information retrieval or data processing charges are not included in gross charges. For example, a customer who accesses an on-line computer data base would not be subject to tax on the charge for the data processing or inquiry, but would be subject to tax on the charge for the transmission of the data. If a telecommunications retailer provides both transmission and data processing services, the charges for each must be disaggregated and separately identified in the books and records of the retailer. If non-telecommunications charges are not disaggregated from the telecommunications charges, the full amount will be subject to Telecommunications Excise Tax. See 86 Ill. Adm. Code 495.100(c), enclosed.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.